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The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its May 12, 2009 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at www.sdcounty.ca.gov/clerb.

CLOSED SESSION

- a) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (13)

ALLEGATIONS, FINDINGS & RATIONALE**07-085**

1. Death Investigation/Suicide – Deputies handcuffed and rendered first aid to a suicidal man holding children hostage until transported to a hospital where he was pronounced deceased.

Finding: Action Justified

Rationale: There was neither a complaint nor any evidence of misconduct by Sheriff's deputies in this case. During a domestic dispute, Martinez was confronted by neighbors in the apartment complex in an effort to protect Martinez's wife and children. Martinez cut himself and others with a butcher knife. Deputies responded, placed Martinez into handcuffs, and attempted to control/stop his bleeding until fire department personnel were permitted to enter the scene. Martinez was transported by Life Flight to a hospital, where he died in the operating room. The cause of death was attributed to Martinez' blood loss as a result of his self-inflicted wounds. The toxicology report confirmed the presence of methamphetamine. The evidence shows the deputies' conduct was lawful, justified and proper.

1. Excessive Force - Deputy 1 punched and kicked the complainant's son, a mentally ill inmate.

Finding: Action Justified

Rationale: The evidence showed the inmate refused to obey commands, repeatedly struck Deputy 1 and violently struggled against him. Deputy 1 pulled the inmate to the ground and struck his face and back so that he and another deputy could gain control of the inmate's flailing arms and legs. Deputy 1's actions were necessary to counter the inmate's aggressive actions, and lawful, justified and proper.

2. Misconduct/Procedure – Deputy 3 failed to properly investigate the incident.

Finding: Action Justified

Rationale: Involved deputies promptly documented their observations and actions and photographed injuries – facial cuts and bruising -- to the inmate and deputy. The evidence showed that the inmate initiated the altercation by repeatedly punching Deputy 1 and that he refused commands to stop resisting. An investigator promptly reviewed these reports and attempted to obtain a statement from the inmate, who declined to give one. The case was promptly submitted to the District Attorney, which exercised its discretion to issue criminal charges against the inmate. The actions of involved deputies were lawful, justified, and proper.

3. Misconduct/Procedure – Deputy 3 failed to refer the complainant's son for medical treatment.

Finding: Action Justified

Rationale: Deputies took the inmate to the jail infirmary for evaluation by a nurse directly after the altercation. The nurse provided an ice pack for a swollen eye and recommended stitches for a facial cut. The inmate refused stitches, subsequent appointments to check the injuries, as well as psychiatric screening and medication. The Review Board has no jurisdiction over medical issues or staff. The actions of sworn personnel were lawful, justified and proper.

4. Misconduct/Procedure – Deputy 3 placed the complainant's son in disciplinary isolation.

Finding: Action Justified

Rationale: Inmates are advised of inmate rules of conduct, which forbid disobeying staff and assaulting staff. The inmate was seen striking Deputy 1, who was injured. Photographs and medical reports corroborated the injury. The inmate was charged with violating inmate rules. After a hearing before an uninvolved supervisor, the inmate was placed in disciplinary isolation for 10 days. This action was lawful, justified and proper.

5. Misconduct/Untruthfulness - Deputy 2 made a false statement regarding injury to the complainant's son.

Finding: Action Justified

Rationale: In response to the complainant's concerns, Deputy 2 had medical staff examine the inmate within three weeks of the altercation. He also spoke to and saw the inmate before responding to the complainant in writing. Consistent with the medical examination showing no abnormalities or reflecting any complaints by the inmate, Deputy 2 accurately wrote that there was no evidence of a black eye and no observable injuries. His actions were lawful, justified, and proper.

6. Misconduct/Retaliation – Deputy 2 transferred the inmate to “cover up” the inmate's injuries.

Finding: Action Justified

Rationale: There was no evidence of injuries as described in the complaint or a “cover up” of these alleged injuries. The inmate has been housed at three different jails and segregated from other inmates because of inmate violence and threats and violent actions toward staff. He was also moved for housing needs, including bunk availability and placing him in jails near the courtrooms where his pending cases are assigned. The inmate's transfers were lawful, justified and proper.

08-042

1. Misconduct/Procedure – Deputy 1 allowed some women to wear jackets in a holding tank but not the complainant's daughter.

Finding: Not Sustained

Rationale: Deputies were contacted based upon deployment logs but none remembered the aggrieved or any requests by prisoners for jackets or blankets. Further investigation is not possible. There was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Procedure – Deputy 1 failed to respond to complaints about the cold temperature in a holding tank.

Finding: Not Sustained

Rationale: A review of maintenance records did not show any work orders or other documentation for the facility regarding temperature issues. Maintenance personnel stated that the detention facility is periodically adjusted between 72 and 70 degrees during winter months and that the internal heat that is maintained in the cinderblock would make it very unlikely to maintain a room temperature under 65 degrees. Deputies were contacted based upon deployment logs, but none remembered the aggrieved or any requests concerning temperature. Further investigation is not possible. There was insufficient evidence to either prove or disprove the allegation.

08-047

1. Excessive Force/Less-Lethal Specialty Munition – Deputy 1 ordered the complainant to the ground then shot him in the forehead.

Finding: Action Justified

Rationale: The complainant abandoned a stolen vehicle and fled from law enforcement officers into a residential neighborhood until confronted by Deputy 1, who was armed with a bean bag shotgun and ordered the complainant to the ground. The complainant complied, with his head and shoulders facing the deputy, but refused to show his hands and appeared to be reaching into his waistband. Deputy 1 thought Perez was fumbling for a gun and feared Perez would try to shoot him or a nearby law enforcement officer. Deputy 1 targeted the complainant's shoulder, fired and missed. After un-jamming the shotgun, Deputy 1 fired a second bean bag, which struck the complainant in the forehead. Deputy 1 used reasonable and necessary force to subdue the complainant, and his conduct was lawful, justified and proper.

08-053

1. Misconduct/Procedure – Deputies 1 and 2 threw away the complainant's property.

Finding: Summary Dismissal

Rationale: The complainant and witnesses did not cooperate with the investigation and cannot be located.

2. Misconduct/Procedure – An unidentified deputy improperly answered the complainant's grievance about his property by referring him to County Counsel, which does not accept collect calls.

Finding: Summary Dismissal

Rationale: See above.

3. Misconduct/Procedure – Unidentified deputies allowed juice seized from the complainant's cell to ferment into pruno before testing it.

Finding: Summary Dismissal

Rationale: See above.

4. Discrimination/Racial – Deputy 1 questioned the complainant, who is Mexican, and not White or Indian inmates about ownership of the pruno, wrote him up for a rules violation, and placed him in “the hole” because of prejudice.

Finding: Summary Dismissal

Rationale: See above.

5. False Reporting – Deputy 1 omitted the complainant’s statement that he didn’t have any pruno from his report.

Finding: Summary Dismissal

Rationale: See above.

6. Criminal Conduct – An unidentified deputy mishandled evidence by returning pruno to the cell and photographing it.

Finding: Summary Dismissal

Rationale: See above.

08-054

1. Misconduct/Procedure - Deputy 1 refused to take a noise complaint from the complainant.

Finding: Action Justified

Rationale: Deputy 1 investigated a complaint about loud banging and rattling at 11:30 p.m. coming from the condominium unit directly above the complainant. He found that the upstairs resident weighed about 350 pounds and that his “loud walking” above the complainant likely could not be prevented. He also found that the refrigerator motor in the upstairs unit caused the complainant’s windows to rattle. He concluded that these sounds, though disturbing to the complainant, did not rise to the level of willful, malicious, loud and unreasonable noise required for a disturbing the peace arrest. His actions were lawful, justified and proper.

2. Misconduct/Procedure - Unidentified deputies interfered with a tow of a car from the complainant’s parking space.

Finding: Unfounded

Rationale: According the Sheriff’s Department, there was no record of deputy involvement in a tow from the location on the date and time alleged. According to the responsible towing company, there was no record of a tow for the location at the date and time alleged. The evidence showed the alleged conduct did not occur.

08-057

1. Excessive Force – Deputies 1 and/or 2 twice punched the complainant in the face and jaw after he raised his arms in surrender.

Finding: Unfounded

Rationale: The complainant’s refusal to yield to arresting deputies entitled them to use the necessary amount of force to effect an arrest. The arrest report documented deputies’ use of body weight to guide the complainant to the ground where he was then handcuffed. However, there is no corroborating evidence to support the complainant’s assertion of being punched. Sheriff’s booking photograph gave no indication of facial injuries and Sheriff’s medical record documentation also refuted this allegation. The evidence does not show that the alleged conduct occurred.

2. Misconduct/Procedure – Deputies 1 and/or 2 failed to provide medical assistance to the complainant after he was twice punched with a closed fist.

Finding: Action Justified

Rationale: There is no corroborating evidence that the complainant was ever punched by deputies. The complainant was twice asked if he needed medical assistance and the complainant denied any need for assistance. The evidence shows the deputies' conduct was lawful, justified and proper.

08-062

1. Death Investigation/Suicide - Deputies 1 and 2 found Inmate Martin hanging in his cell.

Finding: Action Justified

Rationale: There was neither a complaint nor any evidence of misconduct by Sheriff's deputies in this case. Upon finding Martin hanging from a noose fashioned from a bed sheet in his cell during a routine hourly security check, Deputy 1 immediately summoned assistance from Deputy 2, who ran to get a cutting tool, and called for medical help. Deputy 1 cut Martin down while Deputy 2 supported Martin's body. Both deputies checked for vital signs, finding none. Martin was evaluated within a few minutes of discovery by a medical doctor at the jail and pronounced dead. The evidence showed that the actions of Deputies 1 and 2 and other deputies who responded to and investigated the death were justified and in compliance with all applicable policies and procedures.

08-063

1. False Arrest – Deputy 1 arrested the complainant for violating a restraining order based on subjective feelings and not objective facts.

Finding: Action Justified

Rationale: Current restraining orders prohibit the complainant from contacting protected persons. The orders include the protected persons' residence, work places and cars. The complainant was seen driving near the residence. When contacted she said she stopped in front of the residence but did not get out of the car and gave conflicting explanations for her presence in the remote neighborhood. The complainant, who has a history of violating the restraining orders, was criminally charged with violating the orders and pled guilty. Deputy 1's actions in enforcing the restraining orders were lawful, justified, and proper.

2. Misconduct/Procedure – Deputy 1 “tore up” the complainant's car before having it towed.

Finding: Action Justified

Rationale: A law enforcement officer may impound a car following arrest of the driver, to keep the car from blocking traffic, and to safeguard the car and its contents from theft. The complainant was arrested for violating restraining orders, and her car, which contained valuables, was parked on a busy road. Incident to arrest the car was lawfully searched, and its contents were inventoried for accounting and stored for safekeeping before the car was impounded. Deputy 1's actions were lawful, justified, and proper.

3. Misconduct/Procedure – Deputy 1 lost the complainant's 3-carat engagement ring.

Finding: Unfounded

Rationale: Deputy 1 denied losing the complainant's ring. In the presence of a supervisor, Deputy 1 retrieved a ring from the complainant's car at the complainant's request, showed the ring to the complainant, and heat-sealed it in a bag with other personal items. The complainant signed a form that listed her personal items, including the ring, in the sealed bag, which went with the complainant to jail. The complainant signed another form acknowledging that all of her property was returned upon her release from jail. The complainant later

stated she found the lost ring inside her trunk. The evidence showed that Deputy 1 did not lose the complainant's ring.

08-065

1. Excessive Force – Deputy 1 placed the complainant into a chokehold and said, “Die, Die, I want you to die!”

Finding: Summary Dismissal

Rationale: The complainant did not cooperate in the investigation and cannot be located.

2. Excessive Force – Deputy 2 struck the complainant repeatedly with a closed fist to the point of unconsciousness, and then again after he was handcuffed.

Finding: Summary Dismissal

Rationale: The complainant did not cooperate in the investigation and cannot be located.

3. Misconduct/Procedure – Deputies 1 and 2 did not follow procedures regarding medical care after using force in the complainant's arrest.

Finding: Summary Dismissal

Rationale: The complainant did not cooperate in the investigation and cannot be located.

08-066

1. Misconduct/Procedure - Unidentified personnel did not respond to the complainant's grievances about medical care.

Finding: Summary Dismissal

Rationale: The Review Board does not have jurisdiction over medical complaints or personnel; the complainant did not cooperate in the investigation and cannot be located.

08-069

1. Misconduct/Procedure – Deputy 1 was rude and would not listen to the complainant when he called for help to keep the peace with family members.

Finding: Not Sustained

Rationale: The complainant's sister would not allow Sheriff's deputies or her brother onto her property. Deputy 1 advised the complainant that he could not force the adult mother to leave the residence without a court order. Mackey and Stanford argued with one another, and Deputy 1 interceded and mediated a visitation agreement between the parties. Rudeness is subjective in nature, and there was insufficient evidence to either prove or disprove this allegation.

08-073

1. False Arrest – An unidentified deputy arrested the aggrieved for felony assault when he was in fact the victim of a hate crime.

Finding: Summary Dismissal

Rationale: The aggrieved was arrested by a San Diego Police Department officer on a violent felony charge.

The Review Board lacks jurisdiction over this arrest, and this allegation was referred to the Citizens Review Board on Police Practices (CRBPP).

2. Misconduct/Procedure – Unidentified staff improperly incarcerated the aggrieved instead of sending him to a mental health facility.

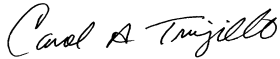
Finding: Action Justified

Rationale: The aggrieved was arrested on a violent felony charge and taken to jail by an SDPD officer. Inmates are routinely screened for medical and psychiatric issues, and the aggrieved was approved for booking into jail. Like other inmates he had access to medical and psychiatric care while in custody. After a hearing, a judge remanded the aggrieved to Sheriff's custody without bail. The aggrieved remained in custody about four months until his criminal cases resolved: he was found incompetent and committed to a mental institution.

3. Misconduct/Medical – The Sheriff's Department failed to refer the aggrieved for mental health treatment in a timely manner that resulted in a lengthy sentence to a state mental hospital.

Finding: Summary Dismissal

Rationale: All inmates are afforded medical and mental health care. Complaints about medical and psychiatric care are outside CLERB's jurisdiction. This matter was referred to the Sheriff's Department for further investigation.



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Executive Officer

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